

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE HERNANDEZ,
Petitioner,
v.
PATRICK COVELLO,
Respondent.

) Case No.: 1:24-cv-0475 JLT SAB
)
)
)
)
)
)
)
)
)
)
)
)
)

Jose Hernandez, a state prisoner, is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, asserting ineffective assistance of trial counsel because his attorney failed to object to the prosecution’s introduction of certain evidence during closing arguments. (Doc. 1 at 5.) The magistrate judge found “it was not objectively unreasonable for the state court to find that Petitioner had not demonstrated there was a reasonable probability that the result of the proceeding would have been different if counsel had objected to the prosecutor’s alleged misconduct.” (Doc. 13 at 14; *see also id.* at 8-14.) Therefore, the magistrate judge determined that “Petitioner is not entitled to habeas relief for ineffective assistance of counsel,” and recommended the petition be denied. (*Id.*)

The Court served the Findings and Recommendations on Petitioner and notified him that any objections were due within 30 days. (Doc. 13 at 15.) The Court advised him that the “failure to file objections within the specified time may waive the right to appeal the District Court’s order.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Petitioner did not file objections,

1 and the time to do so has passed. According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo*
2 review of this case. Having carefully reviewed the matter, the Court concludes the Findings and
3 Recommendations are supported by the record and proper analysis.

4 The Court must also determine whether a certificate of appealability should issue. A court may
5 issue a certificate of appealability where the petitioner has “made a substantial showing of the denial of
6 a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). If a
7 court denies a habeas petition on the merits, a certificate of appealability will only issue “if jurists of
8 reason could disagree with the district court’s resolution of [the petitioner’s] constitutional claims or
9 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
10 further.” *Miller-El*, 537 U.S. at 327 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). While
11 Petitioner is not required to prove the merits, he must demonstrate “that reasonable jurists would find
12 the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* at 323-24 (citing
13 *Slack*, 529 U.S. at 1039-1040). This requires Petitioner to show “something more than the absence of
14 frivolity or the existence of mere good faith on his or her part.” *Id.* at 338 (internal quotation marks
15 omitted). The Court finds reasonable jurists would not find its determination that the petition should be
16 denied is debatable or wrong, or that Petitioner should be allowed to proceed. Petitioner did not make
17 the required “substantial showing” of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). For
18 this reason, the Court declines to issue a certificate of appealability. Accordingly, the Court **ORDERS**:

- 19 1. The Findings and Recommendations dated August 22, 2024 (Doc. 13) are **ADOPTED**
20 in full.
- 21 2. The petition for writ of habeas corpus is **DENIED**.
- 22 3. The Court declines to issue a certificate of appealability.
- 23 4. The Clerk of Court is directed to close this case.

24
25 IT IS SO ORDERED.

26 Dated: October 16, 2024


27 UNITED STATES DISTRICT JUDGE